

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 1999-450-C – ORDER NO. 2000-0207

VDW

FEBRUARY 29, 2000

IN RE: Application of Broadstream Corporation for a	)	ORDER GRANTING
Certificate of Public Convenience and Necessity to	)	CERTIFICATE TO
Provide Facilities-Based and Resold Local	)	PROVIDE LOCAL AND
Exchange Telecommunications Services and	)	INTEREXCHANGE
Resold Interexchange Telecommunications	)	TELECOMMUNICATIONS
Services within the State of South Carolina.	)	SERVICES

This matter comes before the Public Service Commission of South Carolina (the “Commission”) by way of the Application of BroadStream Corporation (“Broadstream” or the “Company”) requesting a Certificate of Public Convenience and Necessity authorizing it to provide resold and facilities-based local exchange services and to provide resold interexchange telecommunications services throughout the State of South Carolina. The Company’s Application was filed pursuant to S.C. Code Ann. §58-9-280 (Supp. 1999) and the Regulations of the Public Service Commission of South Carolina.

By letter, the Commission’s Executive Director instructed BroadStream to publish, one time, a prepared Notice of Filing in newspapers of general circulation in the areas affected by the Application. The Notice of Filing informed interested parties of the manner and time in which to file the appropriate pleadings for participation in the proceedings. BroadStream complied with this instruction and provided the Commission with proof of publication of the Notice of Filing. A Petition to Intervene was received from the South Carolina Telephone Coalition (“SCTC”).

A hearing was commenced on February 17, 2000, at 11:30 a.m., in the Commission's Hearing Room. The Honorable Philip T. Bradley, presided. BroadStream was represented by Faye A. Flowers, Esquire. Florence P. Belser, Staff Counsel, represented the Commission Staff. The SCTC did not appear at the hearing.

At the hearing on February 17, 2000, a Stipulation, entered into by the SCTC and BroadStream, was marked for identification and was entered into the evidence of the case. In the Stipulation, BroadStream stipulated that it would seek authority only in non-rural local exchange company ("LEC") service areas of South Carolina and that it would not provide any local service to any customer located in a rural incumbent LEC's service area, unless and until BroadStream provided written notice of its intent prior to the date of the intended service. BroadStream also stipulated that it was not asking the Commission to make a finding at this time regarding whether competition is in the public interest for rural areas. Further, BroadStream agreed to abide by all State and Federal laws and to participate to the extent that it may be required to do so by the Commission in support of universally available telephone service at affordable rates. The SCTC withdrew its opposition to the granting of a statewide Certificate of Public Convenience and Necessity to BroadStream provided the conditions contained in the Stipulation are met. The Stipulation is approved and attached as Order Exhibit 1.

Alfredo Echeverria, Director of Market Deployment for BroadStream, appeared and offered testimony in support of BroadStream's application. According to Mr. Echeverria, the Company plans to offer facilities-based and resold local exchange service in South Carolina and resold interexchange telecommunications services throughout the State of South Carolina. BroadStream is a Delaware corporation and is a wholly-owned subsidiary of Broadstream

Communications Corporation, which in turn is a wholly-owned subsidiary of Commco Partners, L.L.C. BroadStream has received a certificate from the South Carolina Secretary of State to transact business within South Carolina as a foreign corporation.

Mr. Echeverria explained BroadStream's services. BroadStream intends to provide a full range of facilities-based and resale-based local services. Initially, BroadStream will offer its services to small-to-medium sized business customers and to other carriers. In the future and should the market demand be present, BroadStream may also offer residential service. BroadStream intends to provide facilities-based service in areas for which it currently holds Federal Communications Commission ("FCC") authority to construct and operate its 39 GHz microwave facilities. BroadStream will expand its facilities-based service to other areas of South Carolina as it continues to develop its nationwide fixed wireless broadband network. BroadStream has been licensed by the FCC to provide millimeter wave radio services in the 38.6-40.0 GHz band ("39 GHz") in forty-two states. In areas where BroadStream lacks FCC Authority, it may provide service by reselling other certificated providers' services.

Mr. Echeverria explained that telecommunications carriers using 39 GHz facilities as an alternative to the local loop are rapidly entering the marketplace with reliable and inexpensive broadband services. Additionally, Mr. Echeverria offered that the FCC has indicated that the 39 GHz service is an increasingly important competitor to incumbent local exchange carriers. Mr. Echeverria testified that within the service areas for which it holds an FCC license, BroadStream will deploy a wireless broadband "last mile" local access network that will utilize frequency pairs in the 39 GHz band to carry high-speed, digital traffic, including voice, data, and video transmission, to business customers in urban and suburban markets. The bulk of the network will

consist of BroadStream facilities. BroadStream's "last mile" local access network will connect customer premises to BroadStream's network operation center and switch, where traffic will be routed to its final destination via BroadStream's facilities or facilities leased from an underlying local carrier. Mr. Echeverria stated that BroadStream would interconnect with an interexchange carrier to enable it to provide toll service on a resale basis.

Mr. Echeverria explained BroadStream's service offerings, its marketing of services, and BroadStream's customer services. The Company is currently certified in 18 states. The Company has entered into an interconnection agreement with BellSouth. Mr. Echeverria offered that BroadStream possesses the management and technical expertise for operating the proposed telecommunications services. The record reveals that BroadStream's officers, owners, manager consultants, and major investors have been or are in the business of designing, building, and maintaining state-of-the art telecommunications networks throughout the world. Further, the record indicates that the key personnel of BroadStream enjoy a wide spectrum of business experience including experience in telecommunications, law, management, engineering, research and development, sales and marketing, and finance.

According to Mr. Echeverria, financing will be secured through an interest in the network facilities. Additionally, BroadStream Corporation, the parent company, is in the process of raising approximately \$150 million in gross proceeds from the sale of its Series A Convertible Preferred Stock through a private equity placement. The proceeds from this private equity placement will be made available to BroadStream.

Mr. Echeverria testified that the services provided by BroadStream will meet the services standards of the Commission; that BroadStream's provision of local services would not

adversely impact the availability of affordable local exchange service; and that BroadStream will participate to the extent required by the Commission in the support of universally available telephone service at affordable rates. Further, Mr. Echeverria stated that approval of BroadStream's application would not adversely impact the public interest but would serve the public interest by (1) making available a variety of high quality, reliable broadband telecommunications services at highly competitive rates; (2) increasing the diversity of facilities and services in the rapidly growing telecommunications market; (3) creating market incentives for all telecommunications providers in South Carolina to provide quality services at competitive prices; (4) creating increased choices for services; (5) enhancing South Carolina economic development; and (6) being consistent with the development of competition in the local telecommunications market. Mr. Echeverria further testified that upon certification from this Commission, BroadStream will abide by all the rules and regulations of the South Carolina Public Service Commission.

BroadStream is seeking a waiver of 26 S.C. Code Ann. Regs. 103-631 requiring it to publish local directories. Mr. Echeverria stated that BroadStream will contract with the incumbent local exchange companies to include listings of BroadStream's customers. In addition, the Company seeks a waiver of 26 S.C. Code Ann. Regs. 103-610 that requires the Company to maintain its books and records within South Carolina. Mr. Echeverria stated that BroadStream will maintain its books and records at its principal office in San Diego, California, but that BroadStream would make its records available to the Commission and the Commission Staff as required. BroadStream also seeks a waiver of any requirement that the Company maintain its financial records in conformance with the Uniform System of Accounts (USOA).

The Company requests authorization to maintain its books in accordance with Generally Accepted Accounting Principles (GAAP). Finally, BroadStream requests a waiver of any reporting requirements which, although applicable to incumbent LECs, are not applicable to competitive carriers such as BroadStream. However, neither the application nor Mr. Echeverria list any specific reporting requirement for which a waiver is sought.

After full consideration of the applicable law, the Company's Application, and the evidence presented at the hearing, the Commission hereby issues its findings of fact and conclusions of law:

**FINDINGS OF FACT**

1. BroadStream is organized as a corporation under the laws of the State of Delaware and has received a certificate from the South Carolina Secretary of State to transact business within South Carolina as a foreign corporation.

2. BroadStream wishes to provide local exchange services and interexchange services within the State of South Carolina.

3. The Commission finds that BroadStream possesses the technical, financial, and managerial resources sufficient to provide the service requested. S.C. Code Ann. §58-9-280(B)(1) (Supp. 1999).

4. The Commission finds that BroadStream's "provision of service will not adversely impact the availability of affordable local exchange service." S.C. Code Ann. §58-9-280(B)(3) (Supp. 1999).

5. The Commission finds that BroadStream will support universally available telephone service at affordable rates. S.C. Code Ann. §58-9-280(B)(4) (Supp. 1999).

6. The Commission finds that BroadStream will provide services which will meet the service standards of the Commission. S.C. Code Ann. §58-9-280(B)(2) (Supp. 1999).

7. The Commission finds that the provision of local exchange service by BroadStream "does not otherwise adversely impact the public interest." S.C. Code Ann. §58-9-280(B)(5) (Supp. 1999).

### **CONCLUSIONS OF LAW**

1. Based on the above findings of fact, the Commission determines that a Certificate of Public Convenience and Necessity should be granted to BroadStream to provide both facilities-based and resold competitive intrastate local exchange services to customers in South Carolina, subject to the Stipulation between BroadStream and the SCTC. The terms of the Stipulation between BroadStream and the SCTC are approved and adopted as a portion of this Order. Any proposal to provide local exchange service to a customer in a rural incumbent LEC's service area is not included in the instant grant of authority. Further, the Company is granted authority to provide intrastate interexchange (long distance) services through intrastate interLATA service and to originate and terminate toll traffic within the same LATA, as set forth herein, through the resale of intrastate Wide Area Telecommunications Services (WATS), Message Telecommunications Service (MTS), directory assistance, travel card service or any other services authorized for resale by tariffs of carriers approved by the Commission.

2. BroadStream shall file, prior to offering local exchange services in South Carolina, its final tariff of its local service offerings conforming to all matters discussed with Staff and comporting with South Carolina law in all matters.

3. With regard to the interexchange service offerings of BroadStream, the Commission adopts a rate design which includes only maximum rate levels for each tariff charge. A rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels has been previously adopted by the Commission. In Re: Application of GTE Sprint Communications Corporation, etc., Order No. 84-622, issued in Docket No. 84-10-C (August 2, 1984).

4. BroadStream shall not adjust its interexchange rates below the approved maximum level without notice to the Commission and to the public. BroadStream shall file its proposed rate changes, publish its notice of such changes, and file affidavits of publication with the Commission two weeks prior to the effective date of the changes. However, the public notice requirement is waived, and therefore not required, for reductions below the maximum cap in instances which do not affect the general body of subscribers or do not constitute a general rate reduction. In Re: Application of GTE Sprint Communications, etc., Order No. 93-638, issued in Docket No. 84-10-C (July 6, 1993). Any proposed increase in the maximum rate level for interexchange services reflected in the tariff which would be applicable to the general body of the Company's subscribers shall constitute a general ratemaking proceeding and will be treated in accordance with the notice and hearing provisions of S.C. Code Ann. §58-9-540 (Supp. 1998).

5. If it has not already done so by the date of issuance of this Order, BroadStream shall file its revised long distance tariff and an accompanying price list within thirty (30) days of receipt of this Order. The revised tariff shall be consistent with the findings of this Order and shall be consistent with the Commission's Rules and Regulations.

6. BroadStream is subject to access charges pursuant to Commission Order No. 86-584 in which the Commission determined that for access purposes resellers should be treated similarly to facilities-based interexchange carriers.

7. With regard to the Company's resale of interexchange service, an end-user should be able to access another interexchange carrier or operator service provider if the end-user so desires.

8. BroadStream shall resell the services of only those interexchange carriers or LECs authorized to do business in South Carolina by this Commission. If BroadStream changes underlying carriers, it shall notify the Commission in writing.

9. With regard to the origination and termination of toll calls within the same LATA, BroadStream shall comply with the terms of Order No. 93-462, Order Approving Stipulation and Agreement, in Docket Nos. 92-182-C, 92-183-C, and 47 CFR 51.209.

10. BroadStream shall file surveillance reports on a calendar or fiscal year basis with the Commission as required by Order No. 88-178 in Docket No. 87-483-C. The proper form for these reports is indicated on Attachment A.

11. Title 23, Chapter 47, South Carolina Code of Laws Ann., governs the establishment and implementation of a "Public Safety Communications Center," which is more commonly known as a "911 system" or "911 service." Services available through a 911 system include law enforcement, fire, and emergency medical services. In recognition of the necessity of quality 911 services being provided to the citizens of South Carolina, the Commission hereby instructs BroadStream to contact the appropriate authorities regarding 911 service in the counties and cities where the Company will be operating. Contact with the appropriate 911 service

authorities is to be made before beginning telephone service in South Carolina. Accompanying this Order is an information packet from the South Carolina Chapter of the National Emergency Number Association (“SC NENA”) with contact information and sample forms. The Company may also obtain information by contacting the E911 Coordinator at the Office of Information Resources of the South Carolina Budget and Control Board. By this Order and prior to providing services within South Carolina, BroadStream shall contact the 911 Coordinator in each county, as well as the 911 Coordinator in each city where the city has its own 911 system, and shall provide information regarding the Company’s operations as required by the 911 system.

12. The Company shall, in compliance with Commission regulations, designate and maintain an authorized utility representative who is prepared to discuss, on a regulatory level, customer relations (complaint) matters, engineering operations, tests and repairs. In addition, the Company shall provide to the Commission in writing the name of the authorized representative to be contacted in connection with general management duties as well as emergencies which occur during non-office hours.

BroadStream shall file the names, addresses, and telephone numbers of these representatives with the Commission within thirty (30) days of receipt of this Order. Attachment B shall be utilized for the provision of this information to the Commission. Further, the Company shall promptly notify the Commission in writing if the representatives are replaced.

13. BroadStream shall conduct its business in compliance with Commission decisions and Orders, both past and future, including but not limited to, any and all Commission decisions which may be rendered in Docket No. 96-018-C regarding local competition.

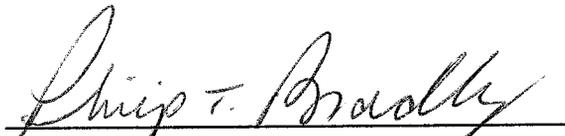
14. By its Application, BroadStream requested waivers from Commission requirements (1) of publishing a directory, (2) of maintaining its books and records in conformance with the Uniform System of Accounts, and (3) of maintaining its books within the State of South Carolina. The Commission finds the reasoning behind BroadStream's requests for these waivers reasonable and hereby grants the waivers of these requested regulations. However, BroadStream's request for waiver of any reporting requirements which, although applicable to incumbent LECs, are not applicable to competitive carriers, such as BroadStream, is denied. Neither, the application nor Mr. Echeverria listed any specific reporting requirement for which BroadStream sought a waiver. As such, BroadStream's request for waiver on this point is too broad and nebulous and cannot be considered. Therefore, BroadStream's request for waiver of reporting requirements is denied. The Company is directed to comply with all Rules and Regulations of the Commission, unless a regulation is specifically waived by the Commission.

15. BroadStream shall file annual financial information in the form of annual reports and gross receipts reports as required by the Commission. The annual report and the gross receipt report will necessitate the filing of intrastate information. Therefore, BroadStream shall keep financial records on an intrastate basis for South Carolina to comply with the requirement

of filing of the annual report and gross receipts report.

16. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

  
Chairman

ATTEST:

  
Executive Director

(SEAL)

BEFORE  
THE PUBLIC SERVICE COMMISSION  
OF  
SOUTH CAROLINA

Docket No. 1999-450-C

Re: Application of BroadStream Corporation )  
for a Certificate of Public Convenience and )  
Necessity to Provide Facilities-Based and )  
Resold Local Telecommunications Services )  
and Resold Interexchange Telecommunications )  
Services in the State of South Carolina )  
\_\_\_\_\_ )

**STIPULATION**

The South Carolina Telephone Coalition ("SCTC") (see attachment "A" for list of companies) and BroadStream Corporation ("BroadStream") hereby enter into the following stipulations. As a consequence of these stipulations and conditions, the necessity for SCTC's intervention in this matter is avoided and SCTC withdraws its opposition to BroadStream's Application. SCTC and BroadStream stipulate and agree as follows:

1. SCTC does not oppose the granting of a statewide Certificate of Public Convenience and Necessity to BroadStream, provided the South Carolina Public Service Commission ("Commission") makes the necessary findings to justify granting of such a certificate, and provided the conditions contained within this stipulation are met.

2. BroadStream stipulates and agrees that any Certificate which may be granted will authorize BroadStream to provide service only to customers located in non-rural local exchange company ("LEC") service areas of South Carolina, except as provided herein.

3. BroadStream stipulates that it is not asking the Commission to make a finding at this time regarding whether competition is in the public interest for rural areas.

4. BroadStream stipulates and agrees that it will not provide any local service, by its own facilities or otherwise, to any customer located in a rural incumbent LEC's service area, unless and until BroadStream provides such rural incumbent LEC and the Commission with written notice of its intent to do so at least thirty (30) days prior to the date of the intended service. During such notice period, the rural incumbent LEC will have the opportunity to petition the Commission to exercise all rights afforded it under Federal and State law. Also, BroadStream acknowledges that the Commission may suspend the intended date for service in rural LEC territory for ninety (90) days while the Commission conducts any proceeding incident to the Petition or upon the Commission's own Motion, provided that the Commission can further suspend the implementation date upon showing of good cause.

5. BroadStream stipulates and agrees that if BroadStream gives notice that it intends to serve a customer located in a rural incumbent LEC's service area, the Commission receives a Petition from the rural incumbent LEC to exercise its rights under Federal or State law, or the Commission institutes a proceeding of its own, then BroadStream will not provide service to any customer located within the service area in question without prior and further Commission approval.

6. BroadStream acknowledges that any right which it may have or acquire to serve a rural telephone company service area in South Carolina is subject to the conditions contained herein, and to any future policies, procedures, and guidelines relevant to such proposed service which the Commission may implement, so long as such policies, procedures, and guidelines do not conflict with Federal or State law.

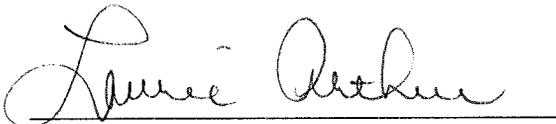
7. The parties stipulate and agree that all rights under Federal and State law are reserved to the rural incumbent LECs, and this Stipulation in no way suspends or adversely affects such rights, including any exemptions, suspensions, or modifications to which they may be entitled.

8. BroadStream agrees to abide by all State and Federal laws and to participate, to the extent it may be required to do so by the Commission, in the support of universally available telephone service at affordable rates.

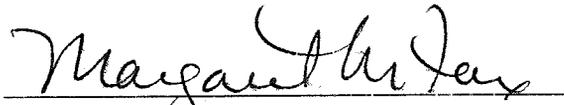
9. BroadStream hereby amends its application and its prefiled testimony in this docket to the extent necessary to conform with this Stipulation.

AGREED AND STIPULATED to this 5<sup>th</sup> day of January, <sup>2000</sup>1999.

BroadStream Corporation:



South Carolina Telephone Coalition:



M. John Bower, Jr.  
Margaret M. Fox  
McNAIR LAW FIRM, P.A.  
Post Office Box 11390  
(803) 799-9800

Attorneys for the South Carolina Telephone  
Coalition

ATTACHMENT A

South Carolina Telephone Coalition Member Companies  
for Purposes of Local Service Stipulation

ALLTEL South Carolina, Inc.  
Bluffton Telephone Company, Inc.  
Chesnee Telephone Company  
Chester Telephone Company  
Farmers Telephone Cooperative, Inc.  
Ft. Mill Telephone Company  
Hargray Telephone Company, Inc.  
Heath Springs Telephone Company Inc.  
Home Telephone Company, Inc.  
Lancaster Telephone Company  
Lockhart Telephone Company  
McClellanville Telephone Company  
Norway Telephone Company  
Palmetto Rural Telephone Cooperative, Inc.  
Piedmont Rural Telephone Cooperative, Inc.  
Pond Branch Telephone Company  
Ridgeway Telephone Company  
Rock Hill Telephone Company  
Sandhill Telephone Cooperative, Inc.  
St. Stephen Telephone Company  
West Carolina Rural Telephone Cooperative, Inc.  
Williston Telephone Company

ANNUAL INFORMATION ON SOUTH CAROLINA OPERATIONS  
FOR INTEREXCHANGE COMPANIES AND AOS'

---

COMPANY NAME

FEIN

---

ADDRESS PHONE NUMBER

---

CITY, STATE, ZIP CODE FAX NUMBER

1. SOUTH CAROLINA OPERATING REVENUES FOR THE 12 MONTHS ENDING  
DECEMBER 31, OR FISCAL YEAR. \$ \_\_\_\_\_
2. SOUTH CAROLINA OPERATING EXPENSES FOR THE 12 MONTHS ENDING  
DECEMBER 31, OR FISCAL YEAR. \$ \_\_\_\_\_
3. RATE BASE INVESTMENT IN SOUTH CAROLINA OPERATIONS FOR THE 12 MONTHS  
ENDING DECEMBER 31, OR FISCAL YEAR. \$ \_\_\_\_\_
4. PARENT'S CAPITAL STRUCTURE FOR THE 12 MONTHS ENDING  
DECEMBER 31, OR FISCAL YEAR. \$ \_\_\_\_\_
5. PARENT'S EMBEDDED COST PERCENTAGE (%) FOR LONG TERM DEBT AND EMBEDDED  
COST PERCENTAGE (%) \_\_\_\_\_
6. ALL DETAILS ON THE ALLOCATION METHOD USED TO DETERMINE THE AMOUNT OF  
EXPENSES ALLOCATED TO SOUTH CAROLINA OPERATIONS AS WELL AS METHOD OF  
ALLOCATION OF COMPANY'S RATE BASE INVESTMENT (SEE #3 ABOVE).

**7. CONTACT PERSON FOR ALL FINANCIAL INQUIRIES AND REPORTING:**

**NAME** \_\_\_\_\_

ADDRESS (IF DIFFERENT FROM COMPANY) \_\_\_\_\_

**TELEPHONE NUMBER** \_\_\_\_\_

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SIGNATURE

---

NAME PLEASE PRINT OR TYPE

---

TITLE

## AUTHORIZED UTILITY REPRESENTATIVE INFORMATION

PURSUANT TO SOUTH CAROLINA PUBLIC SERVICE COMMISSION REGULATION  
103-612.2.4(b) - Each utility shall file and maintain with the Commission the name, title, address, and telephone number of the persons who should be contacted in connection with General Management Duties, Customer Relations (Complaints), Engineering Operations, Test and Repairs, and Emergencies during non-office hours.

\_\_\_\_\_  
Company Name ( Including dba Name(s) or Acronyms used or to be used in South Carolina)

\_\_\_\_\_  
Business Address

\_\_\_\_\_  
City, State, Zip Code

A. \_\_\_\_\_  
General Manager Representative (Please Print or Type)

\_\_\_\_\_  
Telephone Number / Facsimile Number / E-mail Address

B. \_\_\_\_\_  
Customer Relations (Complaints) Representative (Please Print or Type)

\_\_\_\_\_  
Telephone Number / Facsimile Number / E-mail Address

C. \_\_\_\_\_  
Engineering Operations Representative (Please Print or Type)

\_\_\_\_\_  
Telephone Number / Facsimile Number / E-mail Address

D. \_\_\_\_\_  
Test and Repair Representative (Please Print or Type)

\_\_\_\_\_  
Telephone Number / Facsimile Number / E-mail Address

E. \_\_\_\_\_  
Contact for Emergencies During Non-Office Hours (Please Print or Type)

\_\_\_\_\_  
Telephone Number / Facsimile Number / E-mail Address

F. \_\_\_\_\_  
Financial Representative (Please Print or Type)

\_\_\_\_\_  
Telephone Number / Facsimile Number / E-mail Address

G. \_\_\_\_\_  
Customer Contact Telephone Number for Company (Toll Free)

\_\_\_\_\_  
This form was completed by

\_\_\_\_\_  
Signature

**If you have any questions, contact the Consumer Services Department (803-896-5230)  
or Utilities Department at (803-896-5105).**